

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
SAN CARLOS APACHE TRIBE

THIS AGREEMENT is entered into 24 September, 2001 pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the SAN CARLOS APACHE TRIBE acting by and through its TRIBAL COUNCIL (the "Tribe").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Tribe is empowered by Council Resolution to enter into this agreement, a copy of which is attached hereto and made a part hereof, and has resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Tribe.

3. The State and the Tribe desire to participate in an improvement project to SR-170 from MP 271.1 to MP 275.1, a distance of 4 miles, more or less, at an estimated cost of \$6,000,000.00, all at State expense, and have agreed that upon completion of the improvements the State will abandon ownership jurisdiction and maintenance responsibility for all of SR-170 to the Tribe.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO 24907
Filed with the Secretary of State
Date Filed: 09/24/01
Petey Boyles
Secretary of State
B Vicky D. Graenewald

II. SCOPE

1. The State will:

a. Provide design plans, specifications and such other documents and services required for the improvement project suitable for construction bidding and construction. Incorporate or resolve Tribe review comments.

b. Call for bids and award one or more construction contracts for the project. Administer same and make all payments to the contractor. Be responsible for all costs associated with the project, and for any contractor claims for extra compensation due to delays or whatever reason.

c. Upon completion, approve and accept the project improvements on behalf of the parties hereto as complete.

d. Upon completion of the project improvements, and upon approval of and by Resolution of the State Transportation Board, abandon ownership jurisdiction and maintenance responsibility for SR-170 from the MP 271.1 to MP 275.1 to the Tribe.

2. The Tribe will:

a. Review the design documents and provide comments.

b. Upon completion and acceptance of the improvements by the State, accept ownership jurisdiction and maintenance responsibility for SR-170 from the MP 271.1 to MP 275.1, a net distance of 4 miles, more or less.

c. If applicable, waive the requirements of Arizona Revised Statutes Section 28-7209 (formerly 28-106.)

III. MISCELLANEOUS PROVISIONS

1. This agreement shall become effective upon filing with the Secretary of State, and shall remain in force and effect until completion of said Project and payments; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be canceled at any time prior to the commencement of performance of this agreement, upon thirty (30) days written notice to the other party.

2. This agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

3. This agreement shall become effective upon filing with the Secretary of State.

4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

5. Applicable laws and regulations of the State, the Tribe and the Federal government shall govern the rights of the parties with respect to the performance of this agreement. In the event of any controversy which may arise out of this agreement, the parties hereto agree to select a process acceptable to the State, the Tribe and the BIA to resolve such disputes. Such process shall include a provision for arbitration.

6. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007

San Carlos Apache Tribe
Chairman
PO Box 209
San Carlos, AZ 85550


7. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under their respective laws to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

SAN CARLOS APACHE TRIBE

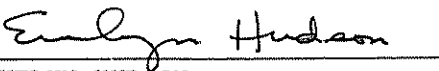
STATE OF ARIZONA

Department of Transportation

By 
RAYMOND STANLEY, Chairman

By 
WILLIAM J. HIGGINS
Deputy State Engineer

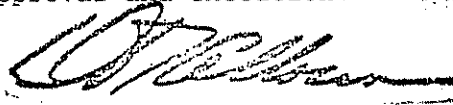
ATTEST:

By 
EVELYN HUDSON
Tribal Secretary

RESOLUTION

BE IT RESOLVED on this 22nd day of May 2001, that I, the undersigned MARY E. PETERS, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona, that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with the San Carlos Apache Tribe for the purpose of constructing improvements to SR-170 and the abandonment of ownership of SR-170 to the Tribe.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Deputy State Engineer for approval and execution.

A handwritten signature in black ink, appearing to read 'D. Allocco', is written over a horizontal line.

DAVID R. ALLOCCO, P.E.
Assistant State Engineer
Engineering Technical Group
for Mary E. Peters, Director

SAN CARLOS APACHE TRIBE
SAN CARLOS APACHE INDIAN RESERVATION
SAN CARLOS, ARIZONA

RESOLUTION

No. MY-01-82

WHEREAS, the San Carlos Apache Tribe is a Federally recognized Indian Tribe organized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat 984); and,

WHEREAS, the construction of the State Route 170 was approved by the Tribal Council in September 1997 and still considers this project as one of its priority projects; and,

WHEREAS, the construction of the State Route 170 will benefit the Tribe and provide a better and safer road to the motoring public; and,

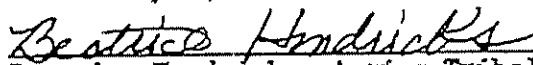
WHEREAS, as it was verbally assured by the authorities of the Arizona Department of Transportation the San Carlos Apache Tribe would like to see the State Route 170 be built according to the current road standard and specification.

NOW THEREFORE BE IT RESOLVED: that the San Carlos Apache Tribal Council reaffirms the Resolution No. SP-97-156 dated September 2, 1997 and approves to give a notice to proceed to the Arizona Department of Transportation to build State Route 170 according to the current road standard and specification.

BE IT FURTHER RESOLVED THAT: the Tribal Chairman, Tribal Vice-Chairman or his designee is hereby authorized to carry out necessary tasks to implement this project.

CERTIFICATION


I, the undersigned Secretary for the San Carlos Apache Tribal Council hereby certify that the Tribal Council is presently composed of eleven (11) members, of whom eleven (11) constituting a quorum, were present at a Special Council Meeting hereto held on the 10th day of May, 2001 and that the foregoing Resolution No. MY-01-82 was duly adopted by a vote of FOR: 9; OPPOSED: 0; of the Tribal Council pursuant to Article V, Section 1(a) of the Amended Constitution and Bylaws of the San Carlos Apache Tribe, effective February 24, 1954.


Beatrice Hendricks, Acting Tribal Secretary
San Carlos Apache Tribal Council

APPROVAL OF THE SAN CARLOS APACHE TRIBE ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, and the SAN CARLOS APACHE TRIBE and declare this agreement to be in proper form and within the powers and authority granted to the Tribe under the laws of the Tribe.

DATED this 29th day of Aug, 2001.



Attorney



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

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INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR99-1894TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED September 14, 2001.

JANET NAPOLITANO
Attorney General

JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:ggt

Enc.

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